IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.51409 M OF 2004

DATE OF DECISION: MAY 09, 2007

Savikar Plyboards Ltd. and another

.....Petitioners

VERSUS

IndusInd Bank Ltd., Chandigarh

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Arvind Mittal, Advocate,
for the petitioners.

Mr. Jagdish Marwaha, Advocate,
for the respondent.

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RANJIT SINGH, J.

The petitioners being aggrieved against the action of the respondent-IndusInd Bank filing complaint, leading to their summoning, have filed this petition under Section 482 Cr.P.C. for quashing of the complaint as well as the summoning order.

The facts leading to summoning of the petitioners make an

interesting reading. Petitioner No.1 is a Company with its office at Chandigarh and petitioner No.2 is its Director. Respondent-IndusInd Bank filed a complaint against the petitioner with the allegation that Delhi Branch of the bank had inadvertently given a mistaken credit of Rs.3 lacs to the petitioner-Company. There was some dispute in this regard whether this amount, allegedly credited in the account of the petitioners, belonged to the petitioner-Company or Rana Polycot Limited. The Bank, after filing complaint, however, produced one Inderjit Singh in support of the allegation, leading to summoning of the petitioners under Section 420 IPC. The petitioners have made a grievance against this order and have filed the petition for quashing.

Counsel for the petitioners would say that the trial Court is totally mis-conceived in stating that the petitioners had made the bank to deliver the amount of Rs.3,00,000/- by dishonestly inducing it to do so whereas even the facts mentioned in the complaint would reveal a different story. A perusal of the complaint shows that it is specifically mentioned therein that the Bank had inadvertently given a mistaken credit of Rs.3,00,000/- in regard to a cheque, which pertained to Rana Polycot Limited. The petitioners would be justified in urging that it was not any act on their part, which led to this cheque being credited to their account and in this background, it will not be possible for any one to say that the petitioner-Company had in any manner acted to cheat the Bank, which would reveal an offence under Section 420 IPC. Even in the summoning order, the Court has clearly noticed that Bank had mistakenly credited this sum in the current account of the petitioner-Company. Still, the Court went on to hold that prima-facie grounds exist in believing that the petitioners

had committed an offence under Section 420 IPC because they closed the account with the Bank. It has further been pleaded by the petitioners that this action of the Bank is vitiated because of mala fides as the Bank was carrying a grudge against them for the reason that on an earlier occasion, the Bank had wrongly debited an amount of 6345 US dollars from the account of the petitioners and thereafter had refused to credit the same despite various requests. Against this action of the Bank, the petitioners had approached the banking OMBUDSMAN at Chandigarh and had also filed a criminal complaint. The case was decided in favour of the petitioner and directions were issued to the respondent-Bank to credit the said amount in the account of the petitioners. This order was challenged by the Bank before Reserved Bank of India by filing an appeal, which was also dismissed. It was thereafter that the Bank compromised the matter with the petitioners and returned the amount. Referring to this background, the petitioners plead that the present proceedings are actuated with malice on this count.

Notice of motion was issued and reply has been filed.

It is pleaded by the Bank that the present approach is mis-conceived and petition is liable to be dismissed. It is stated that petitioner, Ajay Gupta, had played mischief with the bank by withdrawing the amount of Rs.3,00,000/-, which never belonged to him. It is otherwise stated that the amount of Rs.3,00,000/- was inadvertently credited to the account of the petitioner-Company. Still, the action in filing the complaint and summoning the petitioners is being justified on the ground that petitioner, Ajay Gupta, knew that this money did not belong to him but still by operating the account, he

withdrew the same, which reveals an offence under Section 420 IPC.

I have heard learned counsel for the parties.

Conceded position in this case is that the petitioners had no role in deposit of this amount in their account. The respondent-Bank in the complaint as well as in evidence has clearly stated that this amount was credited to the account of the petitioners due to inadvertence on their part. In this background, to allege cheating on the part of the petitioners would be rather far-fetched. It may need a notice that allegation of cheating is being made due to credit of the amount to the account of the petitioners for which they have no role to play and for this the Bank alone is responsible. This aspect, when viewed in the background that Bank had forced the petitioners to undertake various proceedings to receive credit of some amount due to them, would further make the position clear. Earlier the Bank had wrongly debited the amount of the petitioners, for which they had to initiate various proceedings. Could the petitioners, at that stage, had made allegation of cheating against the Bank? If not, the Bank would also not now be entitled to make such an allegation. It is a case of wrong or inadvertent entry in the account of the petitioners. Even if Petitioner No.2 has withdrawn this amount or has not returned the same, it can be recovered by initiating civil proceedings, but it may not, prima-facie, reveal any criminal liability. The Bank would be entitled to recover this amount by initiating any appropriate civil proceedings. Indeed, counsel for the petitioners states that such a proceedings have been initiated by the Bank against the petitioners. Accordingly, no case of cheating, prima-facie, is revealed from the facts and circumstances of the case. As such, the complaint as well

as summoning order cannot be sustained.

In view of the above discussion, the petition is allowed and the complaint, Annexure P-1, and the summoning order, Annexure P-3, are quashed. It is made clear that the Bank is entitled to recover the amount and would be at liberty to do so by initiating appropriate civil proceedings , if not already so done.

May 09, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**